It seems to me that in passing sentence the learned District Judge did not give sufficient consideration to two matters favourable to the appellant. First, credit should be given to the appellant for having regularly served on the Council of the Law Society ever since its inception.

The other matter which also deserves credit is the appellant's services to the University of Singapore, where for the last 18 years he has given his valuable time to teach at the Law Faculty of the University of Singapore. The success of the Faculty especially in the early years of its formation was in no uncertain terms due to the many practising advocates and solicitors like the appellant who volunteered to teach in their spare time or after office hours.

The fines imposed on the eight charges total $28,000 and for the reasons already given this sum appears to be manifestly excessive. Had the acceptance of restitution by the appellant been the subject of a single charge, as it could have been by reason of the provisions of section 71 of the Penal Code, the maximum fine that the District Court could have imposed on that charge would have been $5,000. But then the Public Prosecutor may well have asked that the charge be tried by the High Court. In my opinion justice will be done in this case if the fines on each of the eight charges are reduced from $3,500 to $1,500. The difference is ordered to be refunded to the appellant.

Before parting with this case, I am constrained to observe that the offence of accepting restitution of one's own property in consideration of concealing an offence should be abolished. It seems to me that it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect of it.

Appeal dismissed.

Solicitors: *Amarjit Rubin & Partners.*

MALAYSIAN REPORTS

GOOPAN s/o GOVINDASAMY v. A. SUBRAMANIAM & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat & Syed Othman F.JJ.) November 7, 1979 & February 26, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 159 of 1978]

Practice and Procedure — Claim for negligence against public authority — Limitation — Expiry of period of limitation — Amendment of Legislation — Whether retrospective as to extend expired period — Public Authorities Protection Ordinance, 1948, s. 2.

In this case the appellant was injured when the fell off a tractor trailer on September 19, 1972. At the time of the accident the period for instituting the action against the public authority was twelve months, so that the right of action lapsed on September 19, 1973. However on June 13, 1974 the Public Authorities Protection Ordinance, 1948, was amended to extend the period for instituting action to thirty-six months. The appellant contended that by virtue of the amendment, his action was not time barred. The claim was dismissed in the High Court — see [1979] 2 M.L.J. 84. The appellant appealed.

Held: the amending Act was not truly procedural but affected vested rights and the time for instituting the claim was not enlarged by the amending Act. The amending Act was not retrospective in operation and had no application to a cause of action which was time barred before the Act was introduced.

Cases referred to:-

(1) *Kenderaan Bas Mara* v. *Yew Bon Tew & Anor.* [1980] 1 M.L.J. 311.
(2) *The YDUN* [1899] P. 236.
(3) *Rex* v. *Chandra Dharma* [1905] 2 K.B. 335.
(4) *K.K.K. Ramanathan Chettiar* v. *N.M. Kandappa Goundan* A.I.R. 1951 Mad. 314.
(5) *N.M. Yousoff* v. *Teo Kai Tee & Anor.* [1953] M.L.J. 188.
(6) *Maxwell* v. *Murphy* (1957) 96 C.L.R. 261.

FEDERAL COURT.

David Tay for the appellant.

Lim Beng Choon (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): The only ground of appeal, concerning the question of limitation, involves the construction of section 2(a) of the Public Authorities Protection (Amendment) Act, 1974 (Act A252) (referred to as the new Act).

Both appellant and 1st respondent were employees of 2nd respondent. On September 19, 1972 appellant was a passenger on his way to work on a tractor trailer driven by 1st respondent. Whilst so travelling he fell off the vehicle and suffered injuries. On May 15, 1975 he took out a writ suing the respondents for negligence.

Section 2(a) of the Public Authorities Protection Ordinance, 1948 (referred to as the old Act) reads: —

"2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect —

(a) the suit, action, prosecution or proceeding shall not lie or instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof."

It is not in dispute that at the time of accident the period for instituting such action was twelve months. That is to say if appellant failed to sue respondents by September 19, 1973 he would be time-barred. However, on June 13, 1974 section 2(a) was amended. The words "twelve months" in the old Act were replaced by the words "thirty-six months" in the new Act. It is the contention of appellant that the new Act being concerned with procedural matter its provisions operate retrospectively. Therefore, since he instituted action within "thirty-six months" he was not time-barred. Respondents, on the other hand, maintain that the new Act in no way revive a right which has expired long before the promulgation of the new Act.

Appellant cited *Kenderaan Bas Mara* v. *Yew Bon Tew & Anor.*[1] and stated that he relied on the judgment of Azmi J. which was upheld by this court. However, before the order was perfected this court recalled it and delivered a judgment allowing the appeal. To be fair to appellant it must be stated that when he argued before us the order had not as yet been recalled. The judgment was delivered only on November 27, 1979 while the judgment of the present appeal was reserved. That judgment has rendered our task easier but blown away appellant's reliance on that case.

Except for the dates the facts in that case are substantially the same as the case under appeal. In that case an accident occurred on April 12, 1972 between a motor cycle ridden by 1st appellant with 2nd appellant as pillion rider and a bus belonging to respondents. On March 20, 1975 appellants sued respondents who pleaded limitation by virtue of the new Act. The basis of appellant's contention which found favour with Azmi J. is that the general rule that statutes are not to be given retrospective operation does not apply to statutes that are concerned with matters of procedure only. The learned judge relied on *The YDUN*[2] and *Rex* v. *Chandra Dharma*[3] both authorities for saying that statutes which make alteration to procedure are retrospective in operation. In our view the two cases do not assist us in dealing with this appeal as they are distinguishable.

In *The YDUN*[2] plaintiffs, owners of a barque, issued a writ on November 14, 1898, in an admiralty action against defendants for damages sustained by the grounding of their vessel in the River Ribble on September 13, 1893, through the alleged negligence of the defendants. The English Public Authorities Protection Act, 1893 was passed on December 5, 1893 and came into force on January 1, 1894. Under the Act an action must be commenced six months next after the act, neglect or default complained of. The President, Sir F.H. Jeune, in dismissing the action on the merits, held that the plaintiffs' action was time-barred. The appellant court upheld his decision. The case was reported mainly on the question whether defendants were entitled to avail themselves of the protection of the Act. Two things must be noted. One is that when the incident occurred the Act was not in existence. The other is that it was not concerned with interpreting an amending Act repealing an earlier Act as in the present appeal. In *Rex* v. *Chandra Dharma*[3] the accused was alleged to have committed an offence on July 15, 1904 of unlawfully and carnally knowing a girl under the age of sixteen years, contrary to section 5(1) of the Criminal Law Amendment Act, 1885. Under the Act prosecution was to commence three months after the commission of the offence. That is to say before October 15, 1904 which is significant. However, the prosecution actually commenced on December 27, 1904, more than three months but less than six months after the commission of the offence. By section 27 of the Prevention of Cruelty to Children Act, 1904, the period of three months under the 1885 Act was extended to six months. On a case stated the court held that section 27 related to procedure only, and was, therefore, retrospective, and the conviction must be upheld. It is to be noted that when the amending Act came into force on October 1, 1904 the period of three months under the 1885 Act had not yet expired. It only expired on October 15, 1904. This was clearly in the mind of one of the judges. Channell J. who made this observation at page 339: —

"If the time under the old Act had expired before the new Act came into operation the question would have been entirely different, and in my view it would not have enabled a prosecution to be maintained even within six months from the offence."

This is precisely the situation in the present appeal as it was in *Bas Mara's* case.[1] The time under the old Act had already expired by more than eight months when the new Act came into operation. This is an important point. Appellant's right to sue expired long before the new Act came into force which can in no way revive his right to sue what had lapsed. Hamzah J. clearly had this in mind when he held that the new Act did not affect appellant's right to sue which he had acquired and lost. He was perfectly right to hold further that since the action had already been time-barred before the new Act came into force, it was not affected by the new Act and it continued to be time-barred when the writ was issued on May 15, 1975. It would have been different if the new Act was made before the expiration of the twelve-month period as had happened in *Rex* v. *Chandra Dharma.*[3]

The same point was made in the Indian case of *K.K.K. Ramanathan Chettiar* v. *N.M. Kandappa Goundan*[4] in a passage which reads: —

"It is also well settled that the law of limitation being procedural law, its provisions operate retrospectively in the sense that they apply to causes of action which arose before their enactment. But on an examination of the authorities on the point, we find it equally well established that if a right to sue had become barred by the provisions of the Limitation Act then in force on the date of the coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment."

In the Singapore case of *N.M. Yousoff* v. *Teo Kai Tee & Anor.*[5] where an amendment similar to the case under appeal was held to extend the limitation period which expired before the amendment. Murray-Aynsley, then C.J. considered that defendants could only succeed if section 14 of the Singapore Interpretation Ordinance, 1951 could be interpreted to include a repeal. The Singapore section 14 was almost identical to our section 30(1)(b) of the Interpretation Act, 1967. While our section 3 of the Act defines "repeal" to include "replace" there was no such provision in the Singapore Ordinance. There

is no doubt Murray-Aynsley C.J. would have decided otherwise if a similar provision existed.

We are concerned with a situation where a person's right to institute a cause of action had already expired when the amending Act enlarging time came into operation. If there were no amendment there could be no doubt at all that any action instituted would be time-barred. The amending Act has not altered the position. Very much the same thing was said in *Maxwell* v. *Murphy*[6] by Williams J. in a passage cited by this court in *Bas Mara's* case.[1]

Appellant's claim for damages is based on the provisions of the Civil Law Act, 1956. In order to obtain that remedy the old Act conferred upon him the right to sue within twelve months from the date of the incident. Since he failed to do so within the period he was time-barred. The right under the old Act was conditional upon an action being brought within the allotted time and upon the lapse of that time the right was gone. The new Act came into force some nine months later and could not in any way revive a right which expired. Having regard to the circumstances the new Act in enlarging the time for institution of action could not be regarded as merely procedural.

The same question of construction came up for consideration in the *Bas Mara's* case[1] and the present appeal. It is whether the claim which commenced after the twelve-month period under the old Act and therefore time-barred could be revived by the new Act which enlarged the time to thirty-six months. To answer the question the court has to determine whether the new Act affects procedure matter or substantive rights. If the amendment made by the new Act were regarded as merely procedural it would operate retrospectively. On the other hand, if it were regarded as affecting substantive rights, question of retrospectivity would not arise. We would refer to the observation of this court in *Bas Mara's* case[1] that: —

"The distinction between procedural matters and substantive rights must often be of great fineness. Each case therefore must be looked at subjectively; there will inevitably be some matters that are classified as being concerned with substantive rights which at first sight might be considered procedural and vice versa."

The distinction is so fine it is difficult to draw a dividing line. There are no clear guidelines. Whether the new Act affects procedure or rights depends upon the nature of the new Act. A substantive right may be secreted in the interstices of procedure. It has to be recognised that a change might be described as procedural in character yet may nevertheless affect a vested right adversely. We would repeat what was said by this court in *Bas Mara's* case[1] that the new Act was not truly procedural but affected vested rights and that the time for instituting the claim was not enlarged by the new Act. In other words, the new Act is not retrospective in operation and has no application to a cause of action which was time-barred being before the new Act was introduced. Not only on merits but also on question of law appellant cannot succeed. We would dismiss the appeal with costs. Deposit to respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar.*

TAN SUAN SIM v. CHANG FOOK SHEN

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Abdoolcader J.) December 5, 1979 & March 8, 1980]

[Penang — Federal Court Civil Appeal No. 51 of 1979]

Land Law — Conveyancing — Practice under Torrens System — Agreement for sale of land — Balance of purchase price to be paid at a later date — Completion — Balance to be paid on approval of loan from bank — Refusal to complete — Specific performance.

Evidence — Contract in writing — Completion at "a later date" — Oral evidence to explain latent ambiguity — Evidence Act, 1950, ss. 92(f) and 95.

This was an appeal from the decision of Gunn Chit Tuan J. reported in [1980] 1 M.L.J. 105. The appellant had agreed to sell to the respondent her land and house. The appellant paid the sum of $2,000 as deposit and it was agreed that the balance of the purchase price was to be paid "at a later date." It was understood that the balance would be paid when the respondent obtained a loan from the bank and that the house the subject matter of the purchase was to provide the security for the loan. The appellant however insisted on payment of the balance before execution of the transfer and demanded payment "on or before June 10, 1974" failing which the appellants purported to cancel the contract. The respondent applied for specific performance of the agreement and in the High Court it was held that the respondent in this case was in a position to perform the contract and should have been given reasonable time to do so. In the circumstances specific performance of the contract was ordered. The appellant appealed.

Held, dismissing the appeal: on the evidence and in the circumstances of this case, it is clear that "a later date" meant in the intention of the parties a reasonable time after the loan had been approved and as it appeared that the appellant was not willing to complete, the learned trial judge was correct in ordering specific performance.

Case referred to:-

(1) *James* v. *Smith* [1931] 2 K.B. 317, 322.

FEDERAL COURT.

T.R. Hepworth for the appellant.

R.J. Manecksha for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The agreement in writing for the sale of a house by the appellant to the respondent is simplicity itself. It reads

"I, Puan Tan Suan Sim has agreed to sell the house of No. 38, Fettes Road, Penang, Lot 609 NED PG. Mk. 18, to Mr. Chang Fook Shen of 4, South Avenue, Penang at dollars Thirty four thousand five hundred ($34,500) with vacant possession.

I have also received a sum of two thousand ($2000 cheque 610635) as an initial payment. The balance to be paid at a later date.

The initial (sic) is to be refunded if the grant is not clear. Dated 14.7.3."

But simplicity is not the sole desideratum of legal draftsmanship or in any document spelling out the legal relationship between the parties to it. In this agreement clearly drawn up by the parties without benefit of proper legal advice, a difficult matter of interpretation lies in the use of the phrase "a later date." When this uncertain provision is set out amidst serious disputes of fact, it assumes grave complexity. But the learned judge (Gunn Chit Tuan J.) at the end of the hearing had no difficulty in ordering specific performance.

He clearly disbelieved the appellant and it would